

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of the Psychology License
of Errol C. Jeffrey-Smith, Ed.D., L.P.;
License No. LP 0284

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter is before the undersigned Administrative Law Judge on the motion of the Complaint Resolution Committee (Committee) of the Minnesota Board of Psychology (the Board) for default.

Jacquelyn E. Albright, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, filed the Motion on behalf of the Committee. The Licensee, Errol C. Jeffrey-Smith, Ed.D., L.P., Rural Route 3, Box 157, Shoals, Indiana 47581-9530, has previously appeared on his own behalf in this matter. The motion was initiated by letter received July 24, 1997, from the Committee's counsel. The record has remained open to facilitate any response by the Licensee.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Order, if any, shall be filed with Pauline Walker-Singleton, Executive Director of the Board of Psychology, 2700 University Avenue West, Suite 101, St. Paul, Minnesota 55144.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Licensee, Errol C. Jeffrey-Smith, Ed.D., L.P., at Rural Route 3, Box 157, Shoals, Indiana 47581-9530 and 14314 Portland Avenue South, Burnsville, Minnesota 55337, by first-class mail on February 21, 1997.

2. Licensee confirmed that he was residing in Shoals, Indiana. He participated in a prehearing conference held by telephone on March 6, 1997. The parties agreed that Licensee's responses to the Committee's discovery would be due on May 15, 1997. Administrative Law Judge Letter, March 7, 1997.

3. The discovery served on Licensee was discussed in a telephone conference on April 21, 1997. The due date Licensee's responses was confirmed as May 15, 1997. Administrative Law Judge Letter, April 23, 1997.

4. An Amended Notice of and Order for Hearing and Motion for Mental Health Examination was served on the Licensee by mail at Licensee's Indiana address on May 9, 1997. The Amended Notice set forth the following factual basis for pursuing disciplinary action against the Licensee's psychology license:

1. In an Application for Licensure, dated June 16, 1989, Respondent was asked to list his areas of professional competence defined on the form as "a specific psychological service, technique, method, or procedure in which the psychologist through education, training, or experience has gained sufficient proficiency to be able to provide it to the public with little or no supervision." Respondent stated the following as one of his six areas of competence: "design and implement workshops for separated, divorced & grief group."

2. Respondent provided services as a volunteer group leader/facilitator at a church-sponsored "Separated, Divorced, Widowed Support Group" from approximately 1989 to 1993.

3. Respondent drafted a document entitled "Ethical Principles for Facilitators" for the facilitator training program. A portion of that document states that "Facilitators avoid dating persons who are in the comfort stage of the grief process. They also avoid using their position or status for the purpose of dating or to take advantage of individuals."

4. Respondent enhanced his credibility with certain female group participants by referring to himself as a psychologist and used his position as a psychologist to establish intimacy with these female participants of the group.

5. While acting as a group facilitator, Respondent engaged in unprofessional conduct and used his group leader position and his title of "psychologist," to sexually exploit women support group participants as demonstrated by the following:

a. Participant #1 was referred to Respondent's support group in 1990. Frequently after group sessions, Respondent approached her and conversed with her. Respondent told her he could help her and she should trust him totally.

1) Respondent frequently exchanged phone calls with participant #1, visited restaurants with participant #1 and other group

participants and facilitators after sessions, and dated participant #1 approximately seven to ten times.

2) On one occasion, Respondent told participant #1, "You couldn't ask for anything better. You've got your own licensed psychologist coming to your home."

3) Respondent told participant #1 that if she didn't trust in him, she didn't trust in the Lord; that she was being very disobedient if she didn't obey him; and that if she didn't do what Respondent wanted her to do, she was crazy.

4) Respondent pressured participant #1 to enter a romantic relationship with him. Respondent told her he loved her. During a phone conversation, Respondent asked participant #1 what kind of pajamas, underwear and bras she wore.

5) On one occasion Respondent asked participant #1 to "visualize putting my brown penis in your vagina." Respondent told participant #1 that if she didn't do that, she would be "good to no man."

6) It was a common group practice to give and receive hugs. Respondent hugged participant #1 on several occasions. On one occasion at participant #1's home, Respondent asked for and received a kiss from participant #1. On one occasion Respondent touched participant #1's breast and participant #1 asked him not to do it again.

7) On one occasion Respondent attempted to play an x-rated video at participant #1's home.

b. Participant #2 joined the support group in February of 1992 and attended sessions until January of 1993. Participant #2 was on the social committee and planned social functions for program participants such as dances, volleyball, and tennis.

1) Participant #2 met Respondent at a social function at participant #1's home. Participant #2 learned that Respondent was a school psychologist at that function.

2) On one occasion Respondent told participant #2 that she was very sexually attractive. Respondent stated, "I watch you all the time. I can see men coming on to you."

3) On one occasion Respondent asked participant #2, "Are you as active in bed as you are with your bubbly personality now?"

4) After one session at which participant #2 was "hurting" emotionally, Respondent told her he would like to come home with her, hold her, caress her, and love her like a man should love her.

c. Participant #3 participated regularly in the support group from February of 1991 through the summer of 1992.

1) On one occasion Respondent walked participant #3 to the parking lot after a group session and they discussed participant #3's concerns about her son being depressed about his father leaving. Respondent offered to meet with participant #3 and her son to discuss the son's depression.

2) On that same occasion, Respondent kissed participant #3 on the lips as she was about to depart. Participant #3 told Respondent she was not comfortable with him kissing her. Respondent then kissed her on the cheek and asked if she would go out with him. Respondent then told participant #3, "I wanted to see what kind of person you are - what stage of growth you're at."

d. Participant #4 was referred to the support group by a crisis intervention hotline counselor and joined the group in May of 1992.

1) On one occasion participant #4's friend asked Respondent to help participant #4 "open up" in group. Respondent asked participant #4 to step out into the hallway of the meeting area. Respondent told participant #4 she was "special," "spiritual," and that she was a "nice, sweet young lady."

2) After the group session that same night, Respondent told participant #4 to watch out for men and that men saw her as a "sweet young morsel." Respondent told participant #4 that she was very vulnerable to men. Respondent offered to protect her, told her he was available any time she needed to talk, and exchanged phone numbers with her.

3) Respondent attempted to persuade participant #4 to counsel with him and told her " You're lucky I'm giving you free counseling." Respondent told her he was a licensed sex therapist and an expert on women.

4) Respondent told participant #4 she must have been abused as a child.

5) Respondent asked participant #4 how she wore her lipstick, whether or not she burned incense or wore perfume, what color underwear she wore, how many men she had been with sexually, and whether or not she had orgasms.

6) On another occasion Respondent asked participant #4 what size underwear she wore and whether or not she liked lace. Respondent said he was considering buying some underwear for participant #4. When participant #4 told Respondent she did not like him questioning her about her underwear, Respondent responded "You're supposed to trust me. You don't question your dentist or doctor."

7) On one occasion Respondent told participant #4 she was a very sensual woman and asked her how she would feel about meeting him at a park for lunch. Respondent asked participant #4 to picture them alone in an apartment or a park with his arms around her, kissing her. Respondent then stated something like, "Not that it would ever happen," explaining that he "could get in trouble."

8) During a telephone conversation Respondent told participant #4 that if she did not listen to him, she would never have a healthy sex life. Respondent told participant #4 she should take advantage of his expert sexual knowledge and free counseling because one day people would have to pay "big bucks" to see him because he would be famous in Minnesota.

e. Participant #5 attended approximately six group sessions facilitated by Respondent.

1) During one group session participant #5 became very emotional in group. Respondent told participant #5 he was a psychologist and that if she wanted help, he was available. Respondent then started calling participant #5 at home once or twice a week.

2) Participant #5 was concerned about her relationship with her son and invited Respondent to her home so that Respondent could assess her mother-son relationship. Respondent visited participant #5 at her home and played cards with participant #5 and her son.

3) On one occasion Respondent told participant #5 that God had told him he was the man for her.

- 4) Respondent pressured participant #5 to have a sexual relationship with him. When participant #5 told Respondent she was a sexual abuse victim and was not interested in being sexual with him, Respondent told her to let him be in control and accused her of being a lesbian.
- 5) Respondent told participant #5 that she would never be able to be intimate with a man if she couldn't be intimate with him.
- 6) Respondent told participant #5 that a woman's mouth was her biggest sin.
6. Respondent frequently turned the group discussion to the subject of sex. On one occasion Respondent asked the women in the group if they used vibrators.
7. On one occasion, a man whose wife was in Respondent's support group called the church. He reported he was angry that some male "psychologist" from their program had advised his wife that before she went back to him he should get some counseling.
8. Respondent admitted he talked on the phone with certain women group participants and dated women from groups he facilitated.
9. Respondent stated that hugging at the beginning and end of group sessions was a common practice and that he hugged numerous group participants in this context.
10. Respondent stated he kissed three or four of the women he dated from the group, and he admitted engaging in some sexual touching with some of the women group participants he dated.
11. Respondent admitted asking one woman group participant about the type and size of her pajamas, underwear or bras.
12. Respondent stated that human sexuality is one of his areas of professional interest and expertise.

Amended Notice, at 1-6.

5. The Committee served Interrogatories, Request for Admissions, and Requests for Production of Documents on Licensee by mail on April 1, 1997. The Licensee did not provide responses to this discovery.

6. On June 13, 1997, the Committee filed a motion to compel Licensee to respond to the Committee's discovery requests. No response was filed by the Licensee to that motion. On July 10, 1997, the Administrative Law Judge issued an Order, which included the following:

Failure to comply with this Order will constitute a default. If a default occurs, the allegations or issues set out in a Notice of and Order for hearing may be taken as true or deemed proved without further evidence and the matter may be disposed of adversely to Respondent.

The Order required responses to the Committee's discovery be submitted within five days of the Licensee's receipt of the Order.

7. Licensee has not responded to the Committee's discovery or given any reason for his failure to comply. On July 24, 1997, the Committee moved for default based upon Licensee's failure to comply with the July 10, 1997 Order. Licensee has not responded to the Committee's request for a default.

8. Because the Licensee has failed to respond to the Committee's discovery, he is in default. Pursuant to Minn. Rules 1400.6000 (1995), the allegations contained in the Amended Notice of and Order for Hearing are hereby taken as true.

Based upon the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

1. The Board of Psychology and the Administrative Law Judge have jurisdiction of this matter pursuant to Minn. Stat. §§ 14.50, 148.941, and 210.103.

2. The Board of Psychology has complied with all relevant substantive and procedural requirements of statutes and rule.

3. Licensee received proper and timely notice of the hearing in this matter.

4. The Complaint Resolution Committee of the Board of Psychology has the burden of proof under Minn. Rule pt. 1400.7300, subp. 5, to establish facts showing that disciplinary action should be taken against Licensee.

5. Licensee is in default for failure to comply with the July 10, 1997, Order of the Administrative Law Judge compelling responses to the Committee's discovery.

6. Pursuant to Minn. R. 1400.600, no further evidence is required to demonstrate the allegations in the Amended Notice and Order for Hearing in this matter and those allegations are deemed proven.

7. Minn. Stat. § 148.941, subd. 2 sets out the authority of the Board to impose disciplinary action against a licensee and reads in pertinent part:

(a) The board may impose disciplinary action as described in paragraph (b) against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of psychology, that adversely affects the person's ability or fitness to practice psychology;

(3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of psychology;

* * *

(9) has demonstrated an inability to practice psychology with reasonable skill and safety to clients due to any mental or physical illness or condition; or

* * * *

8. Conditions under which licensed psychologists are prohibited from practice due to the psychologist's state of mind are set forth in Minn. R. 7200.4810, which states in pertinent part::

Subpart 1. **Psychological services prohibited.** A psychologist must not provide psychological services to a client or potential client when the psychologist's objectivity or effectiveness is impaired.

Subp. 2. **Elements of impaired objectivity, effectiveness.** A psychologist's objectivity or effectiveness is impaired whenever:

* * *

D. the psychologist is dysfunctional as a result of a severe physical or mental health problem, including chemical abuse or dependency; or

E. the psychologist exploits the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit.

9. Standards for licensed psychologists in entering relationships with clients are set forth in Minn. R. 7200.4900, which states in pertinent part:

* * *

Subp. 7a. **Exploitation of client.** A psychologist must not exploit in any manner the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit.

Subp. 8. **Sexual contact with a client.** A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to the client. Physical intimacies include handling of the breasts, genital areas, buttocks, or thighs of either sex by either the psychologist or the client. A psychologist must not engage in sexual intercourse or other physical intimacies with a former client for a period of two years following the date of the last professional contact with the client, whether or not the psychologist has formally terminated the professional relationship.

10. The Complaint Resolution Committee has proved by a preponderance of the evidence that the Licensee has exploited clients for his own sexual advantage, engaged in physical intimacies with clients, and engaged in both verbal and physical behavior that is demeaning to clients.

11. The Complaint Resolution Committee has proved by a preponderance of the evidence that the Licensee is dysfunctional as a result of a severe mental health problem and that his objectivity or effectiveness is impaired.

12. The Complaint Resolution Committee has proved by a preponderance of the evidence that the Respondent has engaged in acts or practices tending to show that the Licensee is incompetent and has engaged in conduct reflecting adversely on the Licensee's ability or fitness to engage in the practice of psychology contrary to Minn. Stat. § 148.941, subd. 2(a)(1)-(4) and (9).

13. The above Conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Board of Psychology take disciplinary action against the psychology license of Errol C. Jeffrey-Smith.

Dated this _____ day of August, 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Board has moved for default in this matter due to Licensee's failure to respond to discovery requests made on April 1, 1997. Those requests were initially due on May 15, 1997. On July 10, 1997, the Administrative Law Judge issued an Order that compelled Licensee's response to those discovery requests. The Order expressly stated that failure to comply would result in a default and the issues in this matter being deemed proved without further evidence. Licensee has not complied with the Order and is in default.

Since the Licensee is in default, the allegations in the Amended Notice of Hearing may be deemed proven without any further evidence. The evidence in the Amended Notice is clearly sufficient to support the allegations that Licensee pursued sexual relationships with clients. That conduct violates Minn. Stat. § 148.941, subd. 2 (a)(1)-(4); Minn. R. 7200.4810, subp. 2E; 7200.4900, subps. 7a and 8; and 7200.5700. Discipline is appropriate on those grounds.

The remaining allegations assert that Licensee is suffering from impaired objectivity and a mental disease or defect. To reach those conclusions from the facts set forth in the Amended Notice requires an inference as to the cause of the conduct complained of by clients. Since Licensee has defaulted, the Committee is entitled to make that inference. Discipline for violation of Minn. R. 7200.4810, subps. 1 and 2D, and Minn. Stat. § 148.941, subd. 2(a)(9), is appropriate.

The issue of what discipline is appropriate to impose will be determined by the Board.

S.M.M.